

STATEMENT OF KEN ELDER
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BEFORE THE
SENATE COMMERCE, SCIENCE, AND TRANSPORTATION'S
SUBCOMMITTEE ON CONSUMER AFFAIRS, FOREIGN COMMERCE,
AND TOURISM
HEARING ON S. 1130
"MOTOR VEHICLE RENTAL FAIRNESS ACT OF 1999"
September 30, 1999

Good morning, Mr. Chairman and Members of the Committee. My name is Ken Elder. I am the Chief Executive Officer of the Welcome Corporation, headquartered in Alexandria, Virginia. Welcome is Thrifty Car Rental's licensee in the Baltimore/Washington area. Our car rental locations also stretch north to Harrisburg, Pennsylvania and as far south as Richmond, Virginia and the Tidewater area.

I am appearing today on my own behalf to testify in support of S. 1130, the "Motor Vehicle Rental Fairness Act of 1999." I thank Senator McCain for authoring this important legislation and you, Senator Ashcroft, for calling this hearing and for being an original co-sponsor of the bill.

In order for you to understand the reasons I support this legislation, you must know something about my company. My wife and I founded Welcome in 1970 with 29 cars. We used to joke that I washed and fueled the cars and she rented them. Through hard work,

we have grown since then. Welcome now has 35 rental locations, including operations at seven airports. We operate an average fleet of about 4,000 vehicles company wide and employ 325 workers, including more than 40 who have been with us over 10 years.

Most people would call Welcome an American success story -- a small business that has grown and prospered through personal owner involvement and the dedication and commitment of our employees. I consider it a success on a far more personal level. My son, now a junior at William & Mary, is as passionate about the company as I am and plans to work for Welcome after graduation.

I am proud to say that our company is a success. But every day, this success is threatened by an unfair law that risks the future of our company on events over which we have absolutely no control.

The reason for this threat is the laws in a small minority of states that hold Welcome liable for the negligence of our renters.

These so-called "vicarious liability" laws permit my company to be sued and forced to pay judgments and settlements when we have done nothing wrong. To date, I have been very lucky. Despite the fact that many of the cars we rent regularly travel into Washington, D.C., Florida, and New York -- all vicarious liability jurisdictions -- Welcome has not been hit with a multi-million dollar judgment. However, each year, my company pays a total of over \$1 million in judgments and settlements from claims relating to vicarious liability.

Vicarious liability laws hold car rental companies liable for the negligence of their renters solely because the company owns the vehicle involved in the accident. A plaintiff need not show that Welcome did anything wrong: that we negligently entrusted one of

our cars to an unlicensed driver or to someone under the influence; or, that we failed to maintain the vehicle properly. I take great pride in the quality of our rental fleet. If an accident occurs because we have failed to maintain the car properly, we should be responsible and be sued for our negligence.

But that is not the case here. For vicarious liability, there is no need to show that we have been negligent in any way. Instead, my company is held liable simply because we own the car.

As a result, every time one of Welcome's cars leaves our lots, we are in effect betting the company on the hope that our renter will not cause an accident in a vicarious liability jurisdiction.

Someday, I fear that I am going to lose this bet because the odds eventually catch up with everyone.

Vicarious liability may make some sense when it is applied to individuals. Perhaps society should discourage individuals from lending their personal cars to family members or friends for fear of being held liable for someone else's negligence. That is not for me to decide. However, in the commercial context -- such as the car rental industry -- where lending cars is the very nature of the business activity involved, it does not make sense. An individual can avoid vicarious liability by not lending his or her car to someone else. The only way my company can avoid vicarious liability is to stop renting cars. In other words, to go out of business.

Some may argue that I can insure against my company's exposure to vicarious liability claims. But that is more easily said than done. Currently, Welcome self-insures for all claims up to \$100,000. We carry an additional insurance policy that covers claims between \$100,000 and \$5 million. That policy currently

costs my company \$225,000 per year and we have an excellent claims history. Please understand, if we were hit with a large vicarious judgment, our premiums will skyrocket even higher, if insurance is available to us at all. Just like your premiums would if you make a claim against your personal auto insurance.

As I stated above, without ever accessing our insurance policy, we pay over \$1 million every year in vicarious liability claims. And if a claim is ever made against my company for more than \$5 million, as has happened to larger car rental companies in recent years, then I might as well simply lock the door and turn over the keys because the company I worked so hard to create for almost 30 years will be bankrupt.

Let me give you a couple of examples of the vicarious liability claims my company has faced. While these claims do not involve the multi-million dollar payments you will hear about from other car rental companies, these cases have taken money directly out of my pocket.

First, Welcome rented a car to an individual in Norfolk, Virginia. The renter drove the car to Florida and picked up a friend on the way to the beach. Three days later, the renter was involved in a single car accident on a freeway at 5:00 in the morning. Both the driver and his passenger were legally intoxicated, according to blood tests. The driver was killed in the accident and his passenger was seriously injured.

The passenger in this car sued Welcome for \$1.1 million under Florida's vicarious liability doctrine. Eventually, we settled this case for \$400,000, despite the fact that Welcome had not been negligent in any way and there was no evidence that the car did not operate perfectly.

Second, in 1995, a renter leased a Welcome car at the Richmond airport, stating that he was going to use the car in his local business. One month later, we received a report that the car was involved in an accident in New York. The vehicle was being driven by Mr. Tim Baker, who was not the same person who rented the car and had no apparent connection to our renter. A passenger in the car was injured and sued Welcome under New York's vicarious liability statute because we were the owner of the vehicle. While some issues remain to be settled in this case, Welcome already has paid out over \$55,000 in claims to date on this case with many more thousands of dollars potentially to come in the future. We are paying these sums despite the fact that Welcome was not negligent and in fact had no business or contractual relationship to the person responsible for the accident.

These cases represent a miscarriage of justice and they should be stopped. S. 1130 would accomplish this goal. Simply stated, S. 1130 would pre-empt state laws that hold my company liable for the negligence of our renters solely because we own the vehicle involved in the accident. This bill would not impact my company's potential liability if we are negligent in any way. If we entrust a car to an unqualified driver or fail to maintain the car properly and either of these negligent acts leads to an accident, this bill would not shield my company from liability. Nor should it. However, if the only action we are "guilty" of is owning a quality car that we rent to a qualified, licensed driver, then S. 1130 would not hold us liable for that driver's negligence.

I strongly urge you to pass S. 1130 as quickly as possible. Vicarious liability reform has been passed by both the House and the Senate in the past as part of more sweeping product liability

reform legislation. This Committee approved legislation in 1996 that contained a provision on vicarious liability reform. I ask you to move this bill in this session of Congress and work for its enactment this year.

If you do not, then one morning soon I may wake up to find my fears realized and the company I have worked 30 years to create will be forced into bankruptcy by a vicarious liability judgment.

But, if that happens, and our family business is taken away from us, at least I will be able to tell my son -- the one who wants to join me at Welcome -- that I have done everything in my power to change this unjust system.

Thank you again for your invitation to testify at this hearing today. I would be pleased to answer any questions my testimony may have raised.